

April 13, 2009

Dr. Paul Twomey
President and CEO
Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292-6601

Re: Comments on the New gTLD Program and Process

Dear Mr. Twomey:

The National Business Coalition on E-Commerce and Privacy (“Coalition”) appreciates the opportunity to provide comments regarding ICANN’s Draft Applicant Guidebook, V2 (“Guidebook”).

The Coalition’s membership includes businesses and associations representing diverse economic sectors, including manufacturing, retail, financial services, and media. The 16 major U.S. corporate and trade association members of the Coalition are traditional bricks-and-mortar companies now actively using the Internet and new technologies to offer their customers the ability to engage in electronic transactions.

The Coalition is deeply concerned that the significant increase in the number of gTLDs will be detrimental to both trademark owners and consumers. Brand management and consumer protection on the Internet requires steadfast vigilance, including a vast expenditure of human and financial resources. The challenges faced by trademark owners in this regard are already daunting in the current environment, where there are a finite number of Top Level Domains (“TLDs”) (over 240, to be exact). An increase in the number of gTLDs will only magnify and exacerbate problems that are already exceedingly difficult to manage.

The Coalition strongly urges ICANN not to introduce new gTLDs given the difficulty trademark owners already face in protecting their brands and protecting consumers against the potential for identity theft and fraud.

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I. Additional Consumer Harm Will Result from the Launch of new gTLDs

ICANN has not adopted adequate safeguards to prevent the continued proliferation of malicious activity, such as cybersquatting, “phishing,” trademark dilution, online fraud, and many types of cyber-crimes, that will result from its new gTLD system.

In its most recent Brandjacking Index, which analyzes trends and statistics concerning domain registrations, MarkMonitor noted that “[f]ully 80 percent of the abusive domains that we identified in our first study, in 2007, were still live during our study period and brandjackers continue to use cybersquatting as their tool of choice.”¹

Likewise, MarkMonitor noted that “[p]hishing attacks increased in the last quarter of 2008, particularly targeted at financial sites.”² MarkMonitor observed that phishing attacks grew by 51% in the second half of 2008, noting that “[p]hishers exploited the financial crisis for their own gain.”³ According to MarkMonitor, 444 organizations were phished for the first time in 2008.⁴

The data compiled by MarkMonitor suggest that the problem of phishing is not only becoming more pervasive, but that phishers themselves are becoming more sophisticated in the schemes they use to dupe individuals. Phishing attacks that misappropriate the marks of trusted brands can have significant, adverse consequences for consumers, who are often confused by the misappropriation and incur substantial costs in repairing damage inflicted by identity theft and fraud.

Consumers often do not impute the fraudulent activity to third parties, but rather to the business that has been defrauded. Or, sometimes consumers conclude that the trademark owner whose brand name has been used in the phishing attack has not been vigilant enough in protecting the public from such schemes. Under either scenario, trademark owners suffer substantial and tangible reputational harm, and consumers suffer monetary harm for which there is no adequate remedy.

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¹ *Id.* at 3.

² MarkMonitor, Brandjacking Index: 2008 – Year in Review at 3.

³ *Id.* at 8.

⁴ *Id.*

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“Phishing” is an epidemic that continues to create barriers for the expansion of Internet commerce, since it creates fear among consumers who might otherwise be inclined to conduct business over the Internet. It is thus foreseeable, if not inevitable, that the introduction of new gTLDs will only exacerbate the phishing problem – as well as cybersquatting (discussed in more detail below) - particularly since ICANN is not requiring that gTLD applicants have any prior experience in operating domain name registries.

II. Improvements to the WHOIS Database

The new gTLD system will magnify the problems wrought by private and proxy registrations, creating an environment whereby consumers will increasingly be susceptible to identity theft, fraud, phishing and cyber-crime, and businesses will be compelled to absorb even greater costs to defend their intellectual property rights.

The large number of domain names registered under false pretenses require a commensurate response by ICANN, new gTLD applicants, and domain name registrants. Information about registrants should be readily ascertainable in order for the WHOIS database to function in a manner that fosters security and transparency, thereby serving the interests of both consumers and trademark owners. Unfortunately, proxy and private domain name registrations continue to pose significant barriers for trademark owners seeking to protect intellectual property rights and prevent or mitigate consumer harm. The anonymity associated with proxy and private registrations enables widespread commercial misappropriation of brands, phishing schemes, malware, and the diversion of Web traffic to sites promoting illegal activity (e.g., child pornography, bomb making, and other forms of cyber-crime) and/or otherwise fraudulent activity. In addition, trying to track down these anonymous registrants is a never-ending battle – primarily waged by trademark holders and law enforcement officials – that requires endless public and private resources.

Thus, the integrity of the WHOIS database is critical for the future vitality and integrity of the Internet. If, despite the widespread opposition voiced by numerous Commenters, ICANN decides to move forward with the launch of its new gTLD system, it has an obligation to **tangibly improve** the security of the Internet and reduce fraud by requiring new gTLD applicants and registrants to commit to a WHOIS system that enables trademark holders to quickly vindicate their rights. By developing mechanisms (or requiring gTLD applicants to develop mechanisms) to ensure that IP right holders can

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quickly identify abusive registrants, ICANN can reduce the likelihood of prospective consumer harm.

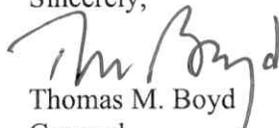
In sum, before allowing for new gTLD registrations, ICANN must address the significant problems that currently plague the WHOIS database. ICANN should require gTLD applicants to commit to participating in an open and transparent WHOIS database. The Guidebook, however, is conspicuously silent on this issue.

III. Conclusion

ICANN has underscored the importance of "competition and choice in the domain-name marketplace while ensuring Internet security and stability." Yet there is no evidence to suggest that new TLDs are in fact needed to promote competition and choice. To the contrary, ICANN's previous expansion of gTLDs has resulted in few registrations, demonstrating that the demand for such TLDs is low. Further, competition and choice will mean very little in a domain name system where consumers and trademark owners lack confidence in the stability and security of the Internet.

The issues discussed above just scratch the surface, but the Coalition believes that they are among the most important. ICANN should not proceed with the introduction of new gTLDs, knowing that significant problems plaguing existing gTLDs remain unresolved.

Sincerely,


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Counsel

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